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January 6, 2003

REDACTED CONFIDENTIAL FILING--REDACTED FOR PUBLIC INSPECTION

Via Electronic Comment Filing System

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Notice of *Ex Parte* Presentation
CC Docket Nos. 01-338, 96-98, 98-147, RM-10593

Dear Ms. Dortch:

T-Mobile USA, Inc. ("T-Mobile") through its undersigned counsel, gives notice of the following *ex parte* meetings on January 3, 2002: with Lisa Zaina, Senior Legal Advisor to Commissioner Adelstein; with Jordan Goldstein, Senior Legal Advisor to Commissioner Copps; and with William Maher, Jeffrey Carlisle, Richard Lerner, Scott Bergmann, and Jeremy Miller of the Wireline Competition Bureau. Mr. Harold Salters, Director, Federal Regulatory Affairs, T-Mobile USA, Inc., and I attended these meetings.

The purpose of the meetings was to discuss CMRS carrier access to unbundled network elements, as discussed in (1) the comments filed by T-Mobile (f/k/a VoiceStream Wireless Corporation) in the above-referenced dockets; (2) the attached presentation which was distributed in the meetings, and (3) the T-Mobile presentation entitled "FCC Triennial Review--What is Needed to Promote Intermodal Competition From the Wireless Industry", previously

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filed for public inspection by means of the Electronic Comment Filing System on December 19, 2002.

Pursuant to 47 C.F.R. § 1.1206(b)(2), a copy of this letter and the attached Redacted Confidential Filing is being filed electronically with the Office of the Secretary for inclusion in the public record of the above-referenced proceeding. One copy of the attached material, containing confidential business information, is being filed with both the Secretary, and with Mr. Gary Remondino of the Wireline Competition Bureau.

Sincerely yours,

Douglas G. Bonner
Counsel for T-Mobile USA, Inc.

Enclosure

cc: Lisa Zaina (w/o encl.)
Jordan Goldstein (w/o encl.)
Matthew Brill (w/encl.)
Daniel Gonzalez (w/encl.)
William Maher (w/o encl.)
Jeffrey Carlisle (w/o encl.)
Richard Lerner (w/o encl.)
Scott Bergmann (w/o encl.)
Jeremy Miller (w/o encl.)
Thomas Navin (w/encl.)

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Re: Notice of *Ex Parte* Presentation
CC Docket Nos. 01-338, 96-98, 98-147, RM-10593

Dear Ms. Dortch:

T-Mobile USA, Inc. ("T-Mobile"), by its undersigned counsel, files this *ex parte* letter to supplement its earlier December 18, 2002 *ex parte* submission in the above-referenced proceeding.

CMRS providers such as T-Mobile are unquestionably impaired in their overwhelming dependence upon incumbent LECs ("ILECs") to provision high capacity transport. CMRS networks have thousands of cell sites that are deployed to originate and terminate calls, over great distances, which in turn, must be connected to centrally located mobile switching centers ("MSCs"). Unlike CLECs, whose fiber networks and switches are predominantly deployed in major metropolitan areas, CMRS carriers must disperse their facilities over vastly greater distances to meet the demands of the mobile customer for ubiquitous, uninterrupted service, and increased network capacity, in residential and non-urban areas. There has been no serious dissent in this proceeding to the proposition that CMRS carriers lack alternatives to ILEC facilities for transport throughout the vast majority of their networks, particularly outside of

urban areas. Impairment due to lack of access to unbundled dedicated transport has been documented by the entire CMRS industry (and by those alternative transport providers who require unbundled access to compete with the ILEC special access market), including by the Cellular Telecommunications & Internet Association, whose membership covers all CMRS providers and manufacturers.¹ Though CMRS carriers have recently emerged as intermodal competitors to the ILECs, local telecommunications services are still dominated by the ILECs.² For intermodal competition to continue to develop, "CMRS carriers still need access to unbundled network elements of incumbent LECs because they have no alternatives to the special access facilities that the incumbent LECs have refused to provide on an unbundled basis to wireless carriers."³ CMRS carriers offer the only intermodal, facilities-based competition to ILEC-dominated service in residential areas underserved by CLECs or wireline competition. As Commissioner Martin has observed in a December, 2002 speech, the unbundling obligations "serve a pro-competitive purpose" and "the unbundling obligations are necessary and need to stay in place in those rural and underserved areas that lack alternative facilities based service providers."⁴

Tariffed special access circuits have historically been purchased from incumbent LECs to transport traffic between and among these CMRS facilities and the incumbent's network due to their ubiquity. Replicating those facilities would involve hopelessly exorbitant installation costs and costs associated with accessing and constructing upon local rights-of-way. These transport costs represent the single largest network operating cost of wireless carriers today. Over 90% of AT&T Wireless' transport costs remunerate ILECs for special access services. This amounts to \$300 million in 2001 (AT&T Wireless 2001 Annual Report).⁵

Nextel Communications reports it has approximately 30,000 high capacity circuits transporting traffic between its over 15,000 cell sites and its MSCs and ILEC central offices. It obtains over 85% of its high capacity dedicated circuits from ILECs.⁶ And this dependence has

¹ Comments of the Cellular Telecommunications & Internet Association at 1 n.1

² *Id.* at 5.

³ *Id.* at 5-6.

⁴ "At the Crossroads", Remarks by Commissioner Kevin J. Martin, 20th Annual PLI/FCBA Telecom Conference, December 12, 2002, at 11.

⁵ This figure is consistent with data compiled and submitted to the Commission by T-Mobile illustrating monthly tariffed special access pricing in three states for a 5 mile dedicated transport circuit from an ILEC hub to a wireless carrier cell site, as compared to the average UNE rate for dedicated transport services. *See*, June 25, 2001 Joint Reply Comments of VoiceStream Wireless Corporation and Nextel Communications, *Joint Petition of BellSouth, SBC and Verizon for Elimination of Mandatory Unbundling of High-Capacity Loops and Dedicated Transport*, ["Joint Petition"], CC Docket No. 96-98, DA 01-911, & Exhibit I (April 13, 2001 letter of Douglas G. Bonner, LeBoeuf Lamb Greene & MacRae, LLP to Michelle Carey, Chief, Policy & Program Planning Division, Common Carrier Bureau at 7 & Exhibit A ("TARIFF/UNE DS-1 COMPARISON IN THREE STATES" [SBC-Illinois, Verizon-New York; BellSouth-Florida])).

⁶ Comments of Nextel Communications, Inc. on Joint Petition (June 11, 2001), CC Docket No. 96-98, DA 01-911, at 1, 4, & Attachment A.

not diminished at all even with special access price increases as high as 8-15%, demonstrating that ILECs⁷ continue to enjoy bottleneck control over high capacity transport facilities.

The reason for this heavy reliance on ILEC networks for high capacity facilities is apparent. Recent evidence from the ILECs themselves demonstrates that alternative high capacity facilities do not exist for CMRS providers. The Fact Report supporting the BOCs' 2001 Joint Petition correctly describes alternative networks which "*generally encircle...the central business district of the relevant market,*" or "*pass by the largest commercial buildings.*"⁸ Indeed, the flawed premise of the BOCs' Joint Petition was that "special access customers tend to be clustered in certain areas--for example, downtown, industrial parks or college campuses..."⁹ which generally describe the limited conditions under which alternative providers may occasionally be found. But these areas do not begin to approach the scope or scale needed to support CMRS networks, which is why CMRS carriers are so heavily dependent upon ILEC special access services.

For purposes of conducting the "cost disparities" analysis called for by the DC Circuit in *USTA v. FCC*,¹⁰ "competitive supply" of high capacity circuits does not exist for at least 90% (96% for T-Mobile) of all high capacity circuits that CMRS providers need to operate their *existing* networks. This percentage will be substantially higher to the extent that CMRS providers are unimpaired to expand their networks beyond initial higher density deployment areas, or to add wireless broadband services.¹¹ This lack of available alternatives is simply because these high capacity circuits are prohibitively expensive to duplicate for any entity without the incumbent's ubiquitous network and existing rights-of-way. The Supreme Court in *Verizon*, in its affirmation of the Commission's TELRIC pricing methodology, has approved the Commission's view that "entrants may need to share some facilities that are *very expensive to duplicate* (say, loop elements) in order to be able to compete in other, *more sensibly duplicable* elements (say, digital switches or signal-multiplexing technology)."¹² If loop elements in predominantly urban areas are too expensive for CLECs to duplicate, then high capacity transport facilities for CMRS carriers are most certainly too expensive for wireless carriers to replicate. This explains the current dependence by CMRS carriers on expensive ILEC special

⁷ *AT&T Petition for Rulemaking to Reform Regulation of Incumbent LEC Rates for Interstate Special Access Services* (filed Oct. 15, 2002) at 12. BellSouth has recently acknowledged its special access rate increases for month-to-month services in 26 "Full Service Relief" MSAs. November 27, 2002 letter to Marlene H. Dortch, Secretary, from W.W. (Whit) Jordan, Vice President-Federal Regulatory, BellSouth, CC Docket No. 01-338, at 8.

⁸ Joint Petition Fact Report, at 9, 11. (Emphasis added).

⁹ Joint Petition, Crandall Declaration, at 14.

¹⁰ 290 F.3d 415, 426-28 (D.C. Cir. 2002)

¹¹ Cell sites upgraded by AT&T Wireless to 2.5G networks will require at least one additional T-1 circuit; 3G will "double or triple" the number of T-1s currently required, or from 5-9 T-1s to 2-3 per site. AT&T Wireless *ex parte* presentation (December 18, 2002) at 9.

¹² *Verizon Communications, Inc. v. FCC*, 535 U.S. 467, 122 S.Ct. 1646, 1672 & n.27. (Emphasis added).

access circuits. Moreover, alternative wholesale providers who would like to provision these circuits to CMRS carrier customers cannot do so without unbundled access to these facilities.¹³

The question is how such an unbundling rule, if adopted, would be implemented. The *USTA* court has accepted the incumbent arguments that a national rule governing impairment is overly "detached from any specific markets or market categories."¹⁴ One Commissioner has publicly stated his belief that "the States" should implement the Commission's [Triennial Review] standard by making the factual determination about whether alternative facilities-based providers exist, and whether impairment exists.¹⁵ A number of CLECs have made similar proposals, calling for a more granular, wire center-focused analysis to evaluate the availability of alternatives to ILEC transport to reach an impairment determination under 47 U.S.C. § 251(d)(2).

While T-Mobile is not subject to state commission jurisdiction over the rates or terms of CMRS carrier entry, T-Mobile acknowledges that state commissions do have jurisdiction, and ample experience, to determine whether, and where, actual competition exists within their states for ILEC dedicated transport facilities. Such an approach would be acceptable to T-Mobile provided that clear criteria are established by the Commission for the state commissions to determine whether impairment does or does not exist, or whether dedicated transport alternatives are available. For any granular impairment analysis to be equitable, and to not unduly favor a particular technology, it must be equally applicable to both wireline and wireless competitors of the ILECs. This is particularly so if intermodal competition with ILEC-dominated local telecommunications services is to continue in residential, non-urban areas. For example, the mere fact that a CLEC competitor is collocated at one end of a route that happens to be a transport hub could not be considered sufficient to establish the existence of competitive transport facilities for wireless carriers. Mere CLEC competitor collocations at hubs or tandem offices, as certain ILECs have suggested be the sole analysis, are of little to no value in determining whether these collocations offer T-Mobile alternative transport serving all incumbent end offices from which T-Mobile currently obtains DS-1 transport to its cell sites. And if no competitor is collocated at a wire center, as occurs in 86% of all wire centers,¹⁶ then CMRS carriers such as T-Mobile should, presumptively, be unable to obtain any alternative

¹³ DukeNet, "has built fiber to 15 of the 30 MSCs" in DukeNet's target market in the Carolinas (CMRS traffic represents about "1/3 of DukeNet's traffic."). However, DukeNet requires dedicated transport and other UNEs to compete with the ILEC for the remaining MSCs and nearly all of its CMRS customers' cell sites. October 16, 2002 *ex parte* letter of Henry C. Campen, Esq. (on behalf of DukeNet) to Marlene H. Dortch, at 2, CC Docket Nos. 01-338, 96-98, 98-147. As DukeNet points out, transport UNEs are also needed to generate "route diversity to MSCs to which DukeNet has built its own fiber." According to DukeNet, building all its own fiber facilities to serve its CMRS customers would be prohibitively expensive. And provisioning by special access circuits in its market are "40-75% more expensive" than their corresponding UNE facilities, leaving DukeNet unable to compete with the ILEC. *Id.*

¹⁴ *USTA*, 290 F.3d at 426.

¹⁵ Remarks of Commissioner Martin (Dec. 12, 2002) at 11.

¹⁶ WorldCom, Inc. October 30, 2002 *ex parte* at 4 (citing UNE Fact Report 2002); *see also*, AT&T Wireless December 20, 2002 *ex parte* at 2.

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transport from that wire center to another ILEC wire center or hub, or from that wire center to the CMRS cell site.

With a well-considered impairment standard in place that provides sufficient guidance to the state commissions to ensure unbundled dedicated transport on a technologically neutral basis where alternative facilities do not exist, there is no reason that the Commission's cannot equally accomplish its objectives to meet the DC Circuit's impairment requirements in *USTA*, and to advance the pro-competitive goals for intermodal facilities-based competition.

Sincerely yours,

Douglas G. Bonner
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